

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8128 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARESH SHAMBHU YADAV

Versus

STATE OF GUJARAT

Appearance:

MS KD PARMAR for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of an order of detention dt. 29/3/2000 Annexure : A passed by Respondent No.2 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner

detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on three I.P.C. cases lodged against the detenu. The detaining authority also placed reliance on statements of two witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of two witnesses on 24/3/2000 and thereafter, he passed an order of detention on 29/3/2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo of this Writ Petition.

4. Ms. K.D.Parmar, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on three I.P.C. cases, out of which, last case was registered vide CR.No.I 206/99 on 9/12/1999 in Pandesara Police Station of Surat City against the detenu, and thereafter, after about three months, Respondent No.2 has passed an order of detention on 29/3/2000. The order of detention is required to be passed to prevent the activities of the detenu. Looking to the period from 9/12/1999 to 29/3/2000, there is a delay of about five months in between last offence registered and date of passing the order of detention. Merely because, there is a delay, the order of detention cannot be set aside. The delay is required to be explained by the concerned authorities. Here in this case, none of the respondents has filed affidavit-in-reply to explain this delay, and therefore, the order of detention is vitiated by unexplained delay.

5. Ms. K.D.Parmar has cited an authority in case of ELESH NANDUBHAI PATEL Vs.COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in 1997(1) G.L.H. 381, wherein there was delay of about five months and 15 days. Question is not of delay. The question is with regard to absence of explanation for passing order of detention after about three months. In that case, it has been held that unexplained delay makes a ground of detention not proximate vitiating the order of detention itself. In this case also, the detaining authority has not at all explained the delay for the period from 9/12/1999 to 29/3/2000, and this unexplained delay itself

vitiates the order of detention.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 29/3/2000 passed by Respondent no.2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 5/10/2000 (H.H.MEHTA,J.)
ccshah